



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2015-0447; FRL-9933-43-Region 10]

Approval and Promulgation of State Implementation Plans; Alaska; Transportation

Conformity State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Alaska (the State). The submission addresses transportation conformity and general conformity requirements. The EPA is approving the submission in accordance with the requirements of the Clean Air Act (the Act).

DATES: This rule is effective on **[Insert date 60 days after date of publication in the Federal Register]**, without further notice, unless the EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0447,

by any of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: pepple.karl@epa.gov
- Mail: Karl Pepple, EPA Region 10, Office of Air, Waste and Toxics, AWT-150, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Hand Delivery / Courier: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Karl Pepple, Office of Air, Waste and Toxics, AWT-150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR- 2015-0447. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Karl Pepple at telephone number: (206) 553-1778, e-mail address: pepple.karl@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we”, “us” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

- I. Background
- II. What is the EPA’s Analysis of the State’s Submittal?
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

On September 27, 1995, the EPA approved the general conformity rules in Article 7 of the Alaska Administrative Code (AAC) Title 18, Chapter 50 into the Alaska SIP (60 FR 49765). General conformity is a requirement of section 176(c) of the CAA to ensure that no federally

supported actions outside of highway and transit projects interfere with the purpose of the approved SIP, *i.e.* the SIP's protection of the national ambient air quality standards (NAAQS). General conformity requirements currently apply to the following criteria pollutants: ozone, particulate matter, carbon monoxide, and nitrogen dioxide. The general conformity regulation is found in 40 CFR part 93, subpart B and in 40 CFR 51.851.

On December 29, 1999, the EPA approved the transportation conformity rules in Article 7 of the Alaska Administrative Code (AAC) Title 18, Chapter 50 into the Alaska SIP (64 FR 72940). Transportation conformity is required under section 176(c) of the Act to ensure that federally supported highway, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide. The transportation conformity regulation is found in 40 CFR part 93, subpart A, and in 40 CFR 51.390.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) transportation act was signed into law, and among other things, it amended the CAA to eliminate the requirement for states to adopt and submit general conformity SIPs. On April 5, 2010 (75 FR 17254), the EPA updated the general conformity SIP regulations to be consistent with the transportation act by eliminating the Federal regulatory requirement for states to adopt and submit general conformity SIPs. See 40 CFR 51.851. On May 7, 2015, with a supplementary letter received July 29, 2015, the Alaska

Department of Environmental Conservation (ADEC) submitted a request to update the transportation conformity regulations and to remove the general conformity regulations from the Alaska SIP.

II. What is the EPA's Analysis of the State's Submittal?

We reviewed the State of Alaska's (the State) transportation conformity and general conformity SIP submittal to ensure consistency with the current CAA, as amended by the transportation act, and EPA regulations governing state procedures for both transportation and general conformity.

Alaska's submittal revises transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures. Alaska's SIP revision updates the State's transportation conformity provisions, Article 7 of the Alaska Administrative Code (AAC) Title 18, Chapter 50 (18 AAC 50), to be consistent with the Act as amended by SAFETEA-LU and EPA regulations (40 CFR Part 93 and 40 CFR 51.390). The EPA has reviewed the submittal to assure consistency with the Act as amended by SAFETEA-LU and EPA regulations (40 CFR Part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, the EPA identifies how the submitted procedures, as clarified by the State's July 29, 2015, supplement, satisfy the requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and

our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

Alaska's SIP revision also addresses general conformity requirements. The revision removes the general conformity regulations from the Alaska SIP. These regulations are no longer necessary since the establishment of the SAFETEA-LU removed the requirement for states to maintain general conformity regulations. Specifically, 40 CFR 51.851(a) was changed to indicate that states "may," not "must" submit to the EPA a general conformity SIP because, as 40 CFR 51.851(b) indicates, Federal agencies shall use the provisions of 40 CFR part 93, subpart B in addition to any existing applicable state or tribal requirements to review the conformity of Federal actions in nonattainment or maintenance areas. Alaska's removal of general conformity rules from its SIP meets the requirements set forth in section 110(l) of the CAA with respect to adoption and submission of SIP revisions. 40 CFR part 93, subpart B continues to subject certain Federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule will not impact continuity of the general conformity program in Alaska, and consequently meets the requirements of section 110(l). Alaska's request to remove the general conformity regulations from the Alaska SIP is approvable.

III. Final Action

The EPA is approving and incorporating by reference into the Alaska SIP the revisions to 18 AAC 50 Article 7, Transportation Conformity, and supporting definitions in 18 AAC 50 Article 9, General Provisions, submitted by the State of Alaska on May 7, 2015, and supplemented on July 29, 2015. The revisions are State effective April 17, 2015. We note that we are not approving the revision to 18 AAC 50.735 because the State determined it was submitted

in error, and requested in the July 29, 2015 supplement that the EPA not approve the revision. The State intends to rescind the rule section in the near future. We also note that the May 7, 2015 submittal included a number of rule revisions to 18 AAC 50 Articles 1 and 2, which are not related to transportation and general conformity. We intend to address those rule revisions in a separate action.

The EPA is approving but not incorporating by reference supplementary letter submitted by Alaska on July 29, 2015. The July 29, 2015 supplement clarifies that Alaska Statute (AS) 40.25.110 and AS 40.25.115, and implementing regulations at 2 AAC 96, Public Information, adequately address availability of materials and reasonable costs associated with access to public records with respect to Transportation Conformity.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the provisions set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements

beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation conformity, Volatile organic compounds.

Dated: August 13, 2015.

Edward H. Chu,
Acting Regional Administrator,
Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52 –APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C-Alaska

2. In § 52.70:

a. The table in paragraph (c) is amended by:

i. Removing the heading entitled “18 AAC 50 Article 7. Conformity” and adding “18 AAC 50 Article 7. Transportation Conformity” in its place;

ii. Revising the entries “18 AAC 50.700”, “18 AAC 50.705”, “18 AAC 50.715”, “18 AAC 50.720”, and “18 AAC 50.990”;

iii. Removing the entries “18 AAC 50.710”, “18 AAC 50.725”, and “18 AAC 50.730”;

and

- iv. Adding the entries “18 AAC 50.712”, “18 AAC 50.740”, “18 AAC 50.745”, and “18 AAC 50.750” in numerical order; and
- b. The table in paragraph (e) under the heading “Section III Area wide Pollutant Control Program”, is amended by:
- i. Revising the entry “I. Transportation Conformity”; and
- ii. Adding, after the new entry for “I. Transportation Conformity”, an entry for “Transportation Conformity Supplement” .

The revisions and additions read as follows:

§ 52.70 Identification of plan.

* * * *

(c) * *

EPA-APPROVED ALASKA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50)				
*	*	*	*	*
18 AAC 50 Article 7. Transportation Conformity				
18 AAC 50.700	Purpose	4/17/15	[insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
18 AAC 50.705	Applicability	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	

18 AAC 50.712	Agency Responsibilities	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
18 AAC 50.715	Interagency Consultation Procedures	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
18 AAC 50.720	Public Involvement	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
* * * * *				
18 AAC 50.740	Written Commitments	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
18 AAC 50.745	Resolving Conflicts	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
18 AAC 50.750	Exempt Projects	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal Register</u> citation]	
* * * * *				
18 AAC 50 Article 9. General Provisions				
* * * * *				
18 AAC 50.990	Definitions	4/17/15	[Insert date of publication in the	

			Federal Register] [Insert <u>Federal</u> <u>Register</u> citation]	
--	--	--	---	--

* * * *

(e) * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
State of Alaska Air Quality Control Plan: Volume II. Analysis of Problems, Control Actions				
*	*	*	*	*
Section III Area wide Pollutant Control Program				
*	*	*	*	*
I. Transportation Conformity	Statewide	4/17/15	[Insert date of publication in the Federal Register] [Insert <u>Federal</u> Register citation]	
Transportation Conformity Supplement	Statewide	7/29/15	[Insert date of publication in the Federal Register] [Insert <u>Federal</u> Register citation]	Clarification re: Access to Public Records: AS 40.25.110, AS 40.25.115, and 2 AAC 96.
*	*	*	*	*

* * * *

[FR Doc. 2015-21938 Filed: 9/4/2015 08:45 am; Publication Date: 9/8/2015]